

## **SANTA CLARA POLICE DEPARTMENT GENERAL ORDER 98.2**

### **BODY WORN CAMERA SYSTEMS**

**ISSUED OCTOBER 2015**

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#### **98.2.1 Purpose and Scope**

- A. To provide policy and procedures for use of the body worn camera system (BWC) including both audio and video recording of field activity in the course of official police duties.
- B. The use of the body worn camera system provides documentary evidence for criminal investigations, internal or administrative investigations, and civil litigation. Personnel shall utilize this device in accordance with the provisions in this general order to maximize the effectiveness of the audio/video documentation to achieve operational objectives and to ensure evidence integrity.

#### **98.2.2 Procedure**

- A. Unauthorized use, duplication, and/or distribution of BWC files is prohibited. Personnel shall not make copies of any BWC file for their personal use and are prohibited from using a recording device such as a phone camera or secondary video camera to record BWC files.
- B. All recorded media, images and audio from the BWC are property of the Santa Clara Police Department and shall not be copied, released, or disseminated in any form or manner outside the parameters of this policy without the express consent of a division captain.
- C. The BWC recordings shall not be of other Department personnel during routine, informal, non-enforcement related activities.
- D. Personnel should be aware of their surroundings when operating the BWC, such as in a hospital emergency room where the privacy of patients should be considered or in other areas, such as a person's place of residence, or areas where there could be an expectation of privacy.
- E. Personnel will use only the BWC system issued and approved by the Department for official police duties. The wearing of any other personal video recorder for the same purpose is not authorized without permission of the Chief of Police.
- F. Personnel shall not remove, dismantle or tamper with any hardware and/or software component or part of the BWC.

- G. There are many situations where the use of the BWC is appropriate. This policy is not intended to describe every possible circumstance. In addition to the required conditions of operation, personnel should activate the system any time they feel its use would be appropriate and/or valuable to document an incident.
- H. Unless it is unsafe or impractical to do so, or mechanical issues that impede the use of the device are present, officers shall make every reasonable effort to activate their BWC prior to making contact in any of the following incidents:
  - 1. Enforcement activity where there is a reasonable suspicion of criminal activity or a violation of law. This includes, but is not limited to dispatched calls where criminal activity is reported and/or suspected, self-initiated activities, traffic stops, pedestrian checks or any other investigative or enforcement encounters.
  - 2. Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.
- I. Personnel may activate the BWC before or during any other incident at their discretion.
- J. Personnel shall have the latitude to terminate the recording when there is no likelihood of force being used or anything else of evidentiary value occurring. It shall be deemed a violation of this policy for personnel to fail to activate the device when required by this policy, or intentionally terminate a recording in order to commit a violation of the law or department policy.
- K. Personnel shall not use the BWC recording functions to record any personal conversation of or between another department member or employee without the recorded member's / employee's knowledge or permission.
- L. Personnel are not required to obtain consent from a private person when:
  - a. In a public place.
  - b. In a location where there is no reasonable expectation of privacy (e.g., inside a building or dwelling where the user is lawfully present and engaged in the performance of official duties).
  - c. In the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation. (Penal Code 633).
  - d. Officers shall make every effort to refrain from recording undercover officers.
- M. Personnel are encouraged to advise private persons they are recording if the advisement may gain compliance, or assist in the investigation, and does not interfere with the investigation or officer safety.
- N. Per-diem stadium officers are exempt from wearing the BWC systems and the BWC policy.

- O. Per the request of the Santa Clara County Sheriff's Office, officers should turn off their BWC system when they enter main jail booking area due to possible HIPAA requirements.

### **98.2.3 Responsibilities**

A. System Administrator

The System Administrators are designated by the Chief of Police and have oversight responsibilities, including, but not limited to, the following:

1. Operation and user administration of the system.
2. System evaluation.
3. Training.
4. Policy and procedure review and evaluation.
5. Coordination with IT regarding system related issues.
6. Ensuring BWC files of evidentiary value are secure and retained per this policy.
7. Ensuring BWC files are reviewed and released in accordance with federal, state, and local statutes and the City of Santa Clara retention policy.

B. Supervisors

1. Supervisors will ensure officers utilize the BWC according to policy guidelines.
2. Supervisors are to review recordings only as directed by the Chief of Police and/or his designee.
3. Supervisors shall ensure videos related to critical incidents are uploaded to the department's Digital Evidence Management System (DEMS).
4. Supervisors may have the ability to immediately resolve citizen complaints by reviewing video captured by the BWC. In those circumstances where a complaint is resolved with no further action necessary, supervisors shall author a memo to the Watch Commander explaining the events surrounding the complaint. This will allow Professional Standards personnel to capture incidents that are resolved by this camera system.
5. Supervisors shall not review recordings for the sole purpose of searching for violations of department policy or law not related to a specific complaint or incident.

C. Personnel utilizing the BWC shall be responsible for the following:

1. Ensuring the battery on the controller and in the camera is fully charged daily and operating properly.
2. As soon as possible reporting unresolved equipment malfunctions and/or problems to their supervisor.
3. Monitoring system effectiveness and making recommendations for operational improvement and General Order revision.
4. **Officers will document** the use of the BWC on one of the following:
  - a. On the police report/computer entry
  - b. As a notation on a citation
  - c. On a Field Interview card/entry.

Note: When preparing written reports, officers should review their recordings as a resource. However, officers should not use the fact that a recording was made as a reason to write a less-detailed report.

5. Once video of evidentiary value is captured officers shall identify BWC files by:
  - a. When assigned, noting the SCPD case number in the Case ID Field.
  - b. Entering a title. The title should include sufficient information to identify the file, such as crime code, suspect name, location, event, etc.
  - c. Selecting the appropriate category(s).
  - d. The information may be entered via MDC or SCPD report writing room by accessing the Digital Evidence Management System (DEMS).
  - e. **When documenting an incident in a written report, officers must state in the report that their written description of the events is a synopsis of the incident and the reader should view the related BWC footage for the exact sequence of events.**
  - f. **If an incident is not captured on BWC video, the involved officer(s) must document in their report the absence of video footage and the reason for its absence. Some examples are: the officer did not have time to activate the BWC; the officer's BWC was being serviced, etc.**

#### **98.2.4 Operation**

- A. Personnel shall test BWC equipment prior to going into service and ensure the unit is functioning properly and charged.

- B. Personnel shall position the camera on their uniform to facilitate an optimum recording field of view.
- C. Personnel shall dock their issued BWC for automated upload of BWC data files daily at the end of their shift to ensure storage capacity is not exceeded and/or to view uploaded audio/video.
- D. Time allowing, personnel that work a stadium event may dock their issued BWC for automated upload of BWC data files at the end of their stadium event to ensure storage capacity is not exceeded and / or to view uploaded audio / video. Personnel may alternatively choose to dock their BWC at the station prior to their next regular patrol shift.

#### **98.2.5 Review of Personal Files**

- A. Once uploaded to DEMS, personnel may view their own audio/video data. DEMS will automatically time/date stamps and records each access by user name.
- B. An employee may review BWC files as follows:
  - 1. For their involvement in an incident, in order to complete a criminal investigation and prepare official reports.
  - 2. Prior to courtroom testimony or for courtroom presentation.
  - 3. Prior to an internal affairs interview when the event recorded is the subject of the investigation, except in the cases of the officer-involved and critical incidents, as set forth below.
- C. If an officer is involved in an “Officer-Involved Incident”, as defined by the Santa Clara County Police Chief’s Association Officer-Involved Incident Guidelines, personnel will provide an initial statement to investigators prior to reviewing any recorded footage of the incident. The involved employee will have an opportunity to review recordings after the initial statement has been taken and provide a supplemental statement if desired.
- D. “Officer Involved Incidents”: Personnel are encouraged to consult legal representation prior to providing a statement pursuant to an administrative and or criminal inquiry.
  - 1. When safe and practical, an on scene supervisor may retrieve the BWC from the involved officer(s) at the scene. The supervisor will be responsible for assuring the camera is docked and uploaded into the DEMS.
  - 2. Following a time sensitive critical incident, a video may only be viewed prior to being uploaded into the DEMS:
    - a. When exigent circumstances occur, such as when an officer is injured, or to obtain

identifying suspect information or other pertinent information.

- b. To allow investigators, such as Professional Standards personnel, to view video in order to assist in an investigation.
3. For potential training purposes as directed by the Chief of Police or his/her designee.
  - a. After a case has been adjudicated or no longer has evidentiary value, the Department may wish to use portions of recorded footage for training purposes. Prior to using this footage, the Department will contact any officers involved or depicted in the footage and advise them of the desire to present said footage for training.
- E. For official use, the DEMS shall only be accessed from Department authorized computers, Department workstations or MDC's.
  1. Exception: Administrative users of the DEMS may access the DEMS from a computer or device outside of the Department for the purpose of completing administrative tasks, such as locking or unlocking users, etc.

#### **98.2.6 BWC Files Request**

##### **A. Departmental requests**

Any request shall be completed by the System Administrator with the approval of the Chief of Police or his/her designee.

##### **B. Non-Departmental requests**

1. All other requests for a BWC file shall be accepted and processed in accordance with federal, state, local statutes and Departmental policy as set forth in General Order 54.2, Release of Records and Information.
2. Media inquiries and/or requests shall be received and processed in accordance with General Order 54.1, Media Relations Policy.

##### **C. Request for Deletion of Accidental Recording**

In the event of an accidental activation of the BWC where the resulting recording is of no investigative or evidentiary value, the recording employee may request that the BWC file be deleted by submitting an email request with sufficient information to locate the video file to the Field Operations Captain or designee, he/she shall approve or deny the request, and forward to the System Administrator for action. The requesting employee shall be notified of the outcome.

##### **D. Copying Procedures**

1. A copy of the BWC file may be made by the involved officer or Records personnel in accordance with the provisions of this General Order for evidence, District Attorney

request, etc.

2. Other than as provided in this General Order, no member of this Department shall download any video from the DEMS onto any computer, device, drive, CD, DVD or any other format without the express consent of the Chief of Police or his/her designee.

E. Investigators Conducting Criminal or Internal Investigations shall:

1. Advise the System Administrator to restrict access/public disclosure of the BWC file in criminal or internal investigations, when necessary.
2. Document the reason for access by entering the related IA case number or reason for access in the "NOTES" field of the DEMS prior to viewing.
3. Review the video file to determine whether the BWC file is of evidentiary value and process in accordance with established procedures.
4. Notify the System Administrator to remove the access restriction when the investigation is closed.

F. A BWC file may be utilized as a training tool for individuals, specific units, and the Department as a whole. A recommendation to utilize a BWC file for such purpose may come from any source.

1. A person recommending utilization of a BWC file for training purposes shall submit the recommendation through the chain of command to the Chief of Police or his/her designee.
2. If an involved officer or employee objects to the showing of a recording, his/her objection will be submitted to the Chief of Police or his/her designee to determine if the employee's objection outweighs the training value.
3. After a meeting with the affected employee and if they elected to have his/her chosen SCPOA representative, the Chief of Police or his/her designee shall review the recommendation and determine how best to utilize the BWC file considering the identity of the person(s) involved, sensitivity of the incident, and benefit of utilizing the file as opposed to using other means (e.g. General Order, Training Bulletin, Officer Safety Bulletin, briefing or other training).

**98.2.7 Category and Retention**

1. Employees utilizing the BWC shall assign each video of evidentiary value a case number. In the event a video does not fall into a specified category and has no apparent evidentiary or administrative value, and it is not associated with a case number, the officer may leave the video as uncategorized. All videos will be retained for one year unless they are of evidentiary value, then they will be kept until the case is adjudicated. The videos will be subject to the SCPD evidence destruction policy. The following retention periods are established by the Chief of

Police in accordance with state and federal mandates and reflect the minimum retention periods; greater retention may be ordered or required due to litigation holds, administrative proceedings, or other processes. Retention periods are subject to change at the Chief of Police's or his / her designee's discretion.

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|---------------------------|-------------------|
| a. Uncategorized          | 1-year retention  |
| b. Arrest – misdemeanor   | Until adjudicated |
| c. Arrest – felony        | Until adjudicated |
| d. Traffic Stop           | Until adjudicated |
| e. Field Interview        | Until adjudicated |
| f. Evidence/Investigation | Until adjudicated |
| g. Pursuit                | Until adjudicated |
| h. Training               | 1-year retention  |
| i. Use of force           | Until adjudicated |
| j. Citizen complaint      | Until adjudicated |
| k. Critical Incident      | 3-year retention  |

#### **98.2.8 Repair Procedure**

A. Personnel shall report any problems with, or malfunction of the BWC to their immediate supervisor as soon as possible.

B. Upon notification, the supervisor shall inform the System Administrator or his/her designee of the problem or malfunction.

C. The System Administrator or designee will report unresolved deficiencies to BWC manufacturer web based support or by sending the defective unit to the BWC manufacturer for repair/replacement.